

UNITED STATES OF AMERICA  
Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on Post E.C.S.

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Docket No. C99-1

OFFICE OF THE CONSUMER ADVOCATE  
RESPONSE TO MOTION OF UNITED STATES POSTAL SERVICE  
FOR PARTIAL RECONSIDERATION OF P.O. RULING NO. C99-1/2  
(June 18, 1999)

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The Office of the Consumer Advocate (OCA) hereby files its response to the Postal Service's motion for partial reconsideration of P.O. Ruling No. C99-1/2.<sup>1</sup> The relief sought by the Postal Service is twofold: (1) have the Presiding Officer reconsider Ruling No. 2 and "establish limits on the scope of this proceeding;" and (2) "issue a procedural schedule identifying the sequence of events expected to take place in this proceeding." OCA opposes reconsideration of Ruling No. 2, but suggests that the Commission clarify the scope of this proceeding and the discovery that the participants are authorized to undertake. With respect to a procedural schedule, it is OCA's view that it is not necessary or appropriate to limit or sequence future procedural events at this early stage.

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<sup>1</sup> "United States Postal Service Motion for Partial Reconsideration of P.O. Ruling No. C99-1/2," filed June 8, 1999.

Scope of the Proceeding

The Postal Service argues that the Commission should severely limit the scope of the instant proceeding “to the narrow question of whether Post E.C.S. is a ‘postal’ service, as that term is understood in a jurisdictional sense.” This is not really a request to reconsider P.O. Ruling No. 2, but rather a collateral attack on the Commission’s Order denying the Postal Service’s motion to dismiss the complaint.<sup>2</sup> Rather than revisit the Order, the Commission should clarify the scope of the proceeding. Certainly discovery fashioned to adduce evidence on the “postal” nature of Post E.C.S. is appropriate, and all such information should be provided without delay. Moreover, it is OCA’s position that the scope of the proceeding (or, at the very least, the scope of discovery) is broad enough to encompass any of the interrogatories submitted by UPS that are intended to elicit information on the costs, volumes, and revenues of Post E.C.S.<sup>3</sup>

It is clear that the Commission has the authority to determine the extent of its jurisdiction, and to conduct any proceedings necessary to do so. In addition, OCA maintains that the Commission has a duty to assess the cost/revenue relationship even of a nonpostal service, particularly when there are strong indications that the nonpostal service at issue is not generating sufficient revenues to cover the costs of providing the service. The Commission’s jurisdiction has this breadth because of its obligation under

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<sup>2</sup> Order No. 1239, “Order Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings,” issued May 3, 1999.

<sup>3</sup> E.g., UPS/USPS-8 and 21-24. OCA notes that UPS’ Motion to Compel Responses to interrogatories submitted to the Postal Service on May 14, 1999, does not include the five interrogatories cited in this footnote. However, OCA intends to file similar interrogatories shortly.

39 U.S.C. §3622(b)(3) to insure that each class of mail or type of mail service (i.e., postal services), bear costs *attributable to that class or type* plus a portion of all other costs reasonably assignable to such class or type. OCA submits that the Commission would be derelict in discharging its duties under the Postal Reorganization Act (PRA) if it were to allow *postal* services to bear the costs of unprofitable nonpostal services. To the extent that individual nonpostal services do not cover their costs, either attributing or assigning such costs to aggregate postal services is unreasonable and improper. Having postal services, especially captive postal services subject to the private express statutes, cross-subsidize nonpostal activities violates the letter and spirit of the PRA and accepted principles of economics and competition models

In Docket No. R94-1 the Commission reached essentially the same conclusion with respect to Federal Express Corp. discovery requests for detailed international mail cost, volume, and revenue data. In Order No. 1025 the Commission held that the Postal Service was obliged to provide such information so that “the impact of international mail operations on the domestic mail revenue requirement” could be verified.<sup>4</sup> Although the Commission acknowledged that it was not authorized to recommend rates for international mail services,<sup>5</sup> it still asserted a need for, and right to, “reliable estimates of the Postal Service’s other sources of revenue and expense, such as international mail.”<sup>6</sup> The Commission expressly recognized the “right of participants

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<sup>4</sup> “Order Granting in Part Motion of Federal Express to Compel Responses to Interrogatories FEC/USPS/2(c) to 24 and FEC/USPS-T-4/2 to 15,” issued August 14, 1994, Docket No R94-1, at 2.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 5.

. . . to a hearing on the accuracy of, and the basis for, the Postal Service's cost, volume, and revenue projections for international mail *to the extent that they impact the total revenue requirement.*"<sup>7</sup> The Commission reasoned further that;\*

Neither the Postal Reorganization Act, nor past experience, supports the notion that international mail cost, volume, or revenue projections should be considered unreviewable, regardless of their impact on the domestic mail revenue requirement;

\* \* \* \* \*

[and] [T]he mandate of §3622(b)(3) that each mail service bear its own direct and indirect cost requires that the Commission ensure that no cost properly attributable to international mail is inadvertently assigned to domestic mail.

Application of these principles to the issue of the extent of the Commission's jurisdiction over nonpostal services leads to the conclusion that UPS and other Docket No. C99-1 participants have a right, derived from 39 U.S.C. §3622(b)(3), to assess the impact of the costs of providing nonpostal services on postal services.<sup>9</sup> The need for such information is especially compelling in the instant proceeding since the Postal Service admits that it offers Post E.C.S. at no charge to customers." It cannot be disputed that there are at least some costs associated with providing Post E.C.S.

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<sup>7</sup> *Id.* (Emphasis added)

<sup>8</sup> *Id.* at 6; and 8.

<sup>9</sup> Since the impact of services that fail to recover their costs is "a matter covered by subchapter II," it is appropriate to examine the impact data in a §3662 complaint proceeding.

<sup>10</sup> Order No. 1239 at 2

Therefore, at least for the present, postal ratepayers are cross-subsidizing Post E.C.S. regardless of its character as a postal or nonpostal service.”

#### Procedural Schedule

The Postal Service asks the Commission to spell out the procedural steps of the Complaint proceeding at this incipient stage. OCA submits that it is too early to fix all procedural events; and the issue whether the Commission's final determination should take the form of a declaratory order or a recommended decision warrants careful deliberation. The proper form of final Commission action is one of the fundamental legal issues to be addressed in this case, so participants must be given ample time to brief the matter. The Commission ought to issue a Notice of Inquiry to solicit participant views on the recommended decision/declaratory order question or advise litigants to brief this issue in initial and reply briefs (if reply briefs are exchanged). The only matter that needs to be clarified at the present time is the scope of discovery.

#### Conclusion

In conclusion, OCA urges the Commission to deny the Postal Service's Motion for Reconsideration of Ruling No. 2, but instead clarify the scope of discovery. In clarifying the scope of discovery, OCA asks the Commission to declare that the costs,

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<sup>11</sup> In opposing FEC's motion to compel in Docket No R94-1, the Postal Service effectively conceded the significance of having jurisdictional services cross-subsidize non-jurisdictional services.

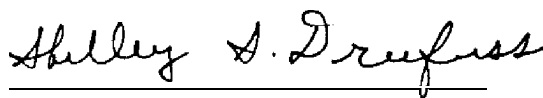
So long as international mail is making even a one-cent contribution to institutional costs, then domestic mail rates are not cross-subsidizing international mail rates.

“Response of the United States Postal Service to Motion of Federal Express Corporation to Compel Responses to Interrogatories and Document Production Requests FEC/USPS-2(c) to 24 and FEC/USPS-T4-2 to 15,” filed June 13, 1994. Docket No. R94-1, at 7. In the case of Post E.C.S., it appears that the service fails not only to contribute a single cent to institutional costs but fails to contribute a single cent even to its attributable costs.

volumes, and revenues of Post E.C.S. are legitimate subjects of inquiry. In addition, OCA asks that the Commission defer judgment on the recommended decision/declaratory order question until the participants have been given a full opportunity to research this issue and present their views

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE

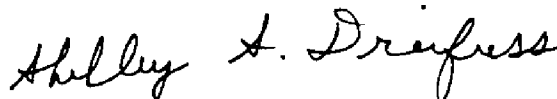
A handwritten signature in cursive script, reading "Shelley S. Dreifuss".

Ted P. Gerarden  
Director

Shelley S. Dreifuss  
Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

A handwritten signature in cursive script, reading "Shelley S. Dreifuss".

SHELLEY S. DREIFUSS  
Attorney

Washington, D.C. 20268-0001  
June 18, 1999